

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. 1:18CR92
)	
)	
vs.)	GOVERNMENT'S NOTICE
)	OF INTENT TO INTRODUCE
)	EVIDENCE PURSUANT TO
JAMES E. MACALPINE,)	FED. R. EVID. 404(b)
Defendant.)	
_____)	

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, to notify the Defendant and the Court, pursuant to Fed. R. Evid. 404(b), of the Government's intent to introduce any and all evidence contained in the expanded file discovery of other crimes, wrongs, or acts committed by the Defendant that is admissible under the Rule to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, lack of accident, or any other purpose supported by case law.

Rule 404(b)(2)(A) requires the Government (upon request by a defendant in a criminal case) to "provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial" This Court's Standard Discovery Order requires the Government to disclose "any evidence the government will offer under Rule [] 404(b)" no later than two weeks before the scheduled trial date. The Government has provided the required information pursuant to its expanded discovery policy.

"Evidence of prior bad actions is admissible under Rule 404(b) if the evidence is (1) relevant to an issue other than the general character of the defendant; (2) necessary to prove an element of the charged offense; and (3) reliable." *United States v. Hodge*, 354 F.3d 305, 312 (4th Cir. 2004) (citing

United States v. Queen, 132 F.3d 991, 997 (4th Cir. 1997). Rule 404(b) is “an inclusive rule, admitting all evidence of other crimes or acts except that which tends to prove only criminal disposition.”

United States v. Young, 248 F.3d 260, 271-72 (4th Cir. 2001) (internal citations and quotation marks omitted). “As a rule of inclusion, the rule’s list is not exhaustive.” *Queen*, 132 F.3d at 994-95. The Rule also permits the inclusion of both prior and subsequent acts. *United States v. Briley*, 770 F.3d 267, 275 (4th Cir. 2014) (citing *United States v. Mohr*, 318 F.3d 613, 617 (4th Cir. 2003)).

Specific evidence that the Government contends may be admissible under this Rule may include (but is not necessarily limited to) the following:

1. **North Carolina State Court Tax Convictions**

As set forth in paragraph four of the Bill of Indictment, the Defendant was convicted in 2001 in District Court for the State of North Carolina of five misdemeanor counts of failing to file or pay his North Carolina state income taxes for tax years 1996 through 2000. As part of the judgment, the state court judge ordered the Defendant to file state and federal tax returns for the missing years and pay the taxes.

As set forth in greater detail in paragraphs five and six of the Indictment, the Defendant partially complied with the state court’s directives. In December 2001, the Defendant filed federal Forms 1040 for tax years 1998, 1999, and 2000, but he did not pay the federal income taxes he self-assessed. During the period of his supervised probation, the Defendant filed Forms 1040 for tax years 2001-2004 and paid the taxes he self-assessed. However, later civil examinations resulted in additional tax assessments for those years that the Defendant did not pay.

The Defendant is charged with evasion of payment for tax due and owing during that time period, so the fact of his conviction is evidence of an element of the offense. It is also admissible under Rule 404(b) as evidence of his knowledge of his obligation to pay taxes. While the Indictment itself provides sufficient notice, the Government nevertheless offers this additional notice.

2. **United States District Court Conviction for Harboring a Fugitive**

On August 23, 2010, the Defendant was convicted of two counts of harboring federal fugitives in the United States District Court for the Western District of North Carolina (1:08CR111). The indictment alleged that the people he harbored were Edward William Wahler and Kathy Ray Wahler. The Government believes that the Defendant is receiving advice from Mr. Wahler regarding his current charges. While the Government does not anticipate using the prior harboring conviction in its case-in-chief, this information may become relevant if the Defendant presents evidence concerning information and/or advice that he received from Mr. Wahler.

3. **United States District Court Civil Judgment**

As set forth in paragraphs 10 and 11 in the Bill of Indictment, the Court granted summary judgment in 2014 in favor of the United States for a lawsuit initiated against the Defendant in 2013 to attempt to recover lost tax revenues. This is not strictly Rule 404(b) evidence because it is evidence that the Defendant in fact has taxes due and owing, which is an element of the offense. However, the Government hereby provides prophylactic notice to the Defendant out of an abundance of caution (even though the Indictment itself provides sufficient notice).

Pursuant to the Government's expanded file discovery policy, any additional evidence admissible under Rule 404(b) (or any other Rule of Evidence) that comes to light shall be provided to the Defendant as soon as it comes available.

RESPECTFULLY SUBMITTED, this the 25th day of October, 2018.

R. ANDREW MURRAY
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

A copy of the foregoing document was mailed to the Defendant at his home address:

James E. MacApine
603 Woodlea Court
Asheville, NC 28806

This the 25th day of October, 2018.

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